

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JANICE L. WEADOCK,)	Civil Case No. 3:17-CV-00244
)	
Plaintiff,)	District Judge _____
)	
vs.)	Magistrate Judge _____
)	
JAMAL TAHA, M.D., <i>et al.</i> ,)	
)	
Defendants.)	

NOTICE OF REMOVAL

The Secretary of the U.S. Department of Health and Human Services hereby gives notice to the Court as follows:

1. Medicare, a federally funded health insurance program, is a named Defendant in an action now pending in the Court of Common Pleas of Miami County, Ohio, Case No. 16CV00219. Because Medicare is a program, it is not an appropriate Defendant.

2. Medicare is administered by the Center for Medicare and Medicaid Services (“CMS”), an agency within the United States of America’s Department of Health and Human Services (“HHS”). The Secretary of HHS, acting through the Administrator of the CMS, has overall responsibility for the Medicare program and possesses broad authority to “prescribe such regulations as may be necessary to carry out the administration of the insurance programs[.]” 42 U.S.C. § 1395hh(a)(1).

3. In this case, Plaintiff is seeking to have this Court adjudicate Medicare’s Secondary Payer (MSP) claim. 42 U.S.C. 1395y(b)(2) *et seq.* However, the sole and exclusive source of subject matter jurisdiction over claims for Medicare benefits is derived from 42 U.S.C.

§ 405(g), as incorporated in the Medicare Act by 42 U.S.C. § 1395ff(b)(1)(A). Those statutory provisions mandate that judicial review is authorized only for **final** administrative decisions. 42 U.S.C. § 1395ff(b)(1)(A); 42 U.S.C. § 405(g).

4. The U.S. Attorney's Office for the Southern District of Ohio became aware of this case on June 30, 2017, when this office was contacted by HHS. A copy of the Second Amended Complaint that was filed in the state court action on June 21, 2017, is attached **Exhibit 1**. Plaintiff has not served this office with a copy of the Second Amended Complaint. Copies of all other pleadings filed in the state court action after the Second Amended Complaint will be filed with the Court on July 24, 2017.

5. The United States is removing this action from the Miami County Court of Common Pleas to this Court under 28 U.S.C. §§ 1442 and 1446. This action is removable under 28 U.S.C. 1442(a)(1) because "the United States or any agency thereof or any officer (or any person acting under that officer) of the United States" may remove a civil action from state court "to the district court of the United States for the district and division embracing the place wherein it is pending."

6. This action has been removed within the 30 day timeframe established by 28 U.S.C. § 1446(d).

7. A copy of this Notice of Removal will be filed promptly with the Court of Common Pleas of Montgomery County to effect the removal, as required by 28 U.S.C. § 1446(d).

8. Counsel for Plaintiff was asked to voluntarily dismiss Medicare as a party to the state court action on the bases explained in this Court's decision in *Knipfer v. Grandview Hospital*, Case No. 3:15-cv-323, Doc. No. 8 (S.D. Ohio July 7, 2016), but counsel has refused to do so.

Respectfully submitted,

BENJAMIN C. GLASSMAN
United States Attorney

s/ Brandi M. Stewart

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CERTIFICATE OF SERVICE

I certify that on July 21, 2017, I filed the foregoing Notice of Removal using the Court's CM/ECF system. I also certify that on the same date I sent a copy of the Notice of Removal by regular U.S. mail to the following:

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